

Sixth Appellate District

San Jose, California

MONDAY, APRIL 23, 2007

H031187 SAN JOSE POLICE AND FIRE RETIREMENT PLAN v. BREWSTER

Appellant's motion to vacate dismissal is granted. The dismissal order filed April 12, 2007, is vacated and the appeal is restored to active status. Appellant is directed to deposit fees for preparation of reporter's transcript pursuant to rule 8.130 within 10 days from the date of this order.

Dated April 23, 2007

Rushing, P.J.

H029942 PEOPLE v. WILLIAMS

By the Court:

On the court's own motion, the submission order in the above-entitled matter dated February 2, 2007, is hereby vacated. The court by separate letter issued April 23, 2007, has requested supplemental briefing from the parties. The cause will be resubmitted upon completion of supplemental briefing.

Dated: April 23, 2007

Bamattre-Manoukian, Acting P.J.

H030054 CITY OF WATSONVILLE v. CORRIGAN, et al.

The judgment is reversed. The matter is remanded for a determination of the reasonable amount of attorney fees and costs the City incurred in good faith in its defense of the underlying action. The parties shall bear their own costs on appeal.

(published)

(Elia, J.; We concur: Rushing, P.J., Premo, J.)

Filed April 23, 2007

H029631 CITY OF MONTE SERENO v. DARLA PADGETT, et al.

The judgment awarding attorney fees is reversed. Costs on appeal are awarded to appellants. (published)

(Elia, J.; We concur: Rushing, P.J., Premo, J.)

Filed April 23, 2007

H029697 PEOPLE v. OWENS

By the Court\*:

Appellants' petition for rehearing is denied.

Filed: April 23, 2007

\*Before Rushing, P.J., Premo, J. and Elia, J.

H029903 DESMARAIS v. DRUMMOND, et al.

By the Court\*:

Appellants' petition for rehearing is denied. The request for judicial notice filed in conjunction with appellants' petition for rehearing is denied.

Filed: April 23, 2007

\*Before Rushing, P.J., Premo, J. and Elia, J.

Sixth Appellate District

San Jose, California

TUESDAY, APRIL 24, 2007

The Court met in its courtroom at 333 West Santa Clara Street, Suite 1060, San Jose, California. Present: Rushing, P.J.; Premo, J.; Elia, J.; and Jane Valdez Flor, Deputy Clerk.

H028782 PEOPLE v. JOHNSON

Cause called and argued by Jeffrey A. Glick appearing for Appellant and by Gregg Zywicke, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

H029725 PEOPLE v. HERNANDEZ

Cause called and argued by Carlo Andreani appearing for Appellant and by Nanette Winaker, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

H029693 PEOPLE v. ANDREW C.

Cause called and argued by Ann F. Vandepol appearing for Appellant and by Michael E. Banister, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

H029034 PEOPLE v. ABANICO, et al.

Cause called and argued by Candace Hale appearing for appellant Abanico, by Emry J. Allen appearing for appellant Lopez, and by Joan Killeen, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

Rushing, P.J., Premo, J., and Elia, J. leave the bench. Bamattre-Manoukian, J., McAdams, J., and Duffy, J. take the bench.

H029346 PEOPLE v. CONWAY

Cause called and argued by Stephen Greenberg appearing for Appellant and by Catherine A. Rivlin, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

H029813 VAZQUEZ, et al. v. SUPERIOR ACCESS INSURANCE SERVICES, INC.

Cause called and argued by Douglas Gordon Benedon appearing for Appellants and by Perry Fredgant appearing for Respondent. Cause ordered submitted.

Court recesses until 1:30 p.m.

The court reconvened in its courtroom at 333 West Santa Clara Street, Suite 1060, San Jose, California. Present: Duffy, J.; Bamattre-Manoukian, Acting P.J.; McAdams, J.; and LaNae Brooks, Deputy Clerk.

Sixth Appellate District

San Jose, California

Tuesday, April 24, 2007 (continued)

H029138 SISEMORE, et al. v. MASTER FINANCIAL, INC et al.

Cause called and argued by Elizabeth Brancart and Kerstin Arusha appearing for Appellants and by David Garcia-Sturgeon appearing for Respondents. Cause ordered submitted.

H029779 PEOPLE v. FERNANDO

Cause called and argued by Pamala Sayasane appearing for Appellant and by John H. Deist, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

H029870 PEOPLE v. MEDINA

Cause called and argued by Mark Stuart Devore appearing for Appellant and by Michael E. Banister, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

H029803 PEOPLE v. MEDINA

Cause called and argued by Mark Stuart Devore appearing for Appellant and by Moe Jamil, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

H029758 PEOPLE v. CRAVIN

Cause called and argued by Thea J. Greenhalgh appearing for Appellant and by Martin S. Kaye, Deputy Attorney General, appearing for Respondent. Cause ordered submitted.

H030087 WOOD v. COUNTY OF SANTA CLARA

Cause called and argued by John A. Shepardson appearing for Appellant and by Steve Schmid appearing for Respondent. Cause ordered submitted. Court is adjourned.

The following cases are submitted this date:

H029592 SAWYER v. MERCEDES-BENZ USA, LLC

H029887 PEOPLE v. BELTRAN

H030372 PEOPLE v. AGUILERA

H029622 PEOPLE v. VILLARREAL

H030407 PEOPLE v. HEARD

H030005 PEOPLE v. ROSS

H029808 PEOPLE v. GUESS

The judgment is reversed and remanded for resentencing.  
(published)

(Rushing, P.J.; We concur: Premo, J., Elia, J.)

Filed April 24, 2007

Sixth Appellate District

San Jose, California

Tuesday, April 24, 2007 (continued)

H029043 STONELIGHT TILE, INC. et al. v. CALIFORNIA INSURANCE  
GUARANTEE ASSOCIATION

By the Court:

Pursuant to California Rules of Court, rule 8.1105(b), the request for publication is hereby granted. It is ordered that the opinion in this matter, filed on March 29, 2007, shall be certified for publication. (McAdams, J.; Bamattre-Manoukian, Acting P.J., Duffy, J.)

Filed: April 24, 2007

WEDNESDAY, APRIL 25, 2007

H028233 PEOPLE v. VASQUEZ

H029168 PEOPLE v. POSADAS

H030783 In re MAURICE A. VASQUEZ on Habeas Corpus

H030954 In re JUAN POSADAS on Habeas Corpus

The judgment in People v. Posadas (case No. H029168) is affirmed. The judgment in People v. Vasquez (case No. H028233) is affirmed. The petition for writ of habeas corpus, In re Maurice A. Vasquez (case No. H030783), is denied. The petition for writ of habeas corpus, in re Juan Carlos Posadas (case No. H030954), is denied. (not published)

(Premo, J.; We concur: Rushing, P.J., Elia, J.)

Filed April 25, 2007

H030212 ROUSH v. SEAGATE TECHNOLOGY, LLC., et al.

The order of the trial court denying plaintiff's motion to disqualify the law firm of Morrison and Foerster and to strike the answer of defendants is affirmed. (published)

(Premo, J.; We concur: Rushing, P.J., Elia, J.)

Filed April 25, 2007

H029217 PEOPLE v. NGUYEN

The judgment is affirmed. (not published)

(McAdams, J.; We concur: Bamattre-Manoukian, Acting P.J., Mihara, J.)

Filed April 25, 2007

The following case is submitted this date:

H029737 PEOPLE v. LOPEZ

Sixth Appellate District

San Jose, California

Wednesday, April 25, 2007 (continued)

H029982 BEAUCHESNE et al. v. CHODERA et al.

The judgment is affirmed. (not published)  
(Premo, J.; We concur: Rushing, P.J., Elia, J.)  
Filed April 25, 2007

H029623 PEOPLE v. LOWE

(Filed order modifying opinion.) The modification effects a change in the judgment. The petition for rehearing is denied. (not published)  
(Duffy, J.; Bamattre-Manoukian, Acting P.J.; Mihara, J.)  
Filed April 25, 2007

H029324 PEOPLE v. KIM

The order granting *coram nobis* relief is reversed. The trial court is directed to enter an order denying defendant's petition. The order vacating conviction is reversed. The trial court is directed to enter an order denying defendant's nonstatutory motion to vacate judgment. (not published)  
(Premo, J.; We concur: Rushing, P.J., Elia, J.)  
Filed April 25, 2007

H030650 PEOPLE v. TREVOR H.

The matter is remanded for proceedings in compliance with this opinion. The judgment is affirmed. (not published)  
(Premo, J.; We concur: Rushing, P.J., Elia, J.)  
Filed April 25, 2007

H029856 PEOPLE v. LEVELL

The judgment is affirmed. (not published)  
(Premo, J.; We concur: Rushing, P.J., Elia, J.)  
Filed April 25, 2007

THURSDAY, APRIL 26, 2007

H029566 PEOPLE v. TILLEY

(Filed order modifying opinion.) The petition for rehearing is denied. This modification does not effect a change in the judgment. (not published)  
(Bamattre-Manoukian, Acting P.J.; McAdams, J.; Duffy, J.)  
Filed April 26, 2007

The following case is submitted this date:

H030215 PEOPLE v. CALDERON

Sixth Appellate District

San Jose, California

Thursday, April 26, 2007 (continued)

H030459 PEOPLE v. BLYTHE

The judgment is affirmed. (not published)  
(Elia, J.; We concur: Rushing, P.J., Premo, J.)  
Filed April 26, 2007

H029335 PEOPLE v. LITMON, JR.

The September 7, 2005 order of recommitment is affirmed.  
(not published)  
(Elia, J.; We concur: Rushing, P.J., Premo, J.)  
Filed April 26, 2007

H028513 PEOPLE v. CARLIN

The order is reversed. (published)  
(Mihara, Acting P.J.; We concur: McAdams, J., Duffy, J.)  
Filed April 26, 2007

H029507 In re BRANDEE TRIPP on Habeas Corpus

(Filed order modifying opinion.) No Change in Judgment.  
The opinion in the above-entitled matter filed on March 28, 2007, was not certified for publication in the Official Reports. For good cause it now appears that the opinion should be published in the Official Reports, and it is so ordered. Pursuant to California Rules of Court, rule 8.1105(b) & (c), this opinion is certified for publication  
(Duffy, J.; Premo, Acting P.J.; Mihara, J.)  
Filed April 26, 2007

FRIDAY, APRIL 27, 2007

H029839 DAVID v. D & D APPAREL, INC., et al.

The order setting aside the default judgment and default is affirmed. (not published)  
(Rushing, P.J.; We concur: Premo, J., Elia, J.)  
Filed April 27, 2007

H029829 PEOPLE v. DULIN

The judgment is affirmed. (not published)  
(Rushing, P.J.; We concur: Premo, J., Elia, J.)  
Filed April 27, 2007

H023394 PEOPLE v. PENA et al.

The true finding on the gang enhancement, pursuant to Penal Code section 186.22, subdivision (b)(1) is reversed. In all other respects, the judgment is affirmed. (not published)  
(Rushing, P.J.; We concur: Premo, J., Elia, J.)  
Filed April 27, 2007

Sixth Appellate District

San Jose, California

Friday, April 27, 2007 (continued)

H030515 LIPSKY ENTERPRISE, INC. v. HUSSAIN

The motion to dismiss the cross-appeal is denied. (not published)

(Rushing, P.J.; We concur: Premo, J., Elia, J.)

Filed April 27, 2007

H029870 PEOPLE v. MEDINA

The appeal is dismissed. (not published)

(McAdams, J.; We concur: Mihara, Acting P.J., Duffy, J.)

Filed April 27, 2007

H029803 PEOPLE v. MEDINA

The judgment is affirmed. (not published)

(McAdams, J.; We concur: Mihara, Acting P.J., Duffy, J.)

Filed April 27, 2007

H029906 PEOPLE v. MADAYAG

The judgment is reversed conditionally. The cause is remanded to the trial court with directions to hold a new in camera hearing on appellant's *Pitchess* motion in conformance with the procedures described in this opinion. If the trial court finds there are discoverable records, they shall be produced and the court shall conduct such further proceedings as are necessary and appropriate. If the court finds there are no discoverable records, or that there is discoverable information but appellant cannot establish that he was prejudiced by the denial of discovery, the judgment shall be affirmed as of that date.

(*People v. Hustead* (1999) 74 Cal.App.4<sup>th</sup> 410, 423; *People v. Guevara, supra*, 148 Cal.App.4<sup>th</sup> 62.) If the judgment is affirmed, the sentence on count two shall be stayed pursuant to Penal Code section 654. (not published)

(Elia, J.; We concur: Rushing, P.J., Premo, J.)

Filed April 27, 2007

H030540 In re PAULINE H.; DFCS v. PAULINE H., et al.

By the Court\*:

Appellant's petition for rehearing is denied.

Filed: April 27, 2007

\*Before Premo, J., Rushing, P.J. and Elia, J.